

MF 01-19
Tax Type: Motor Fuel Use Tax
Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

V.

JOHN DOE

Taxpayer

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Docket No. 01-ST-0000

Acct # 00-00000

NTL # 00-000000 0

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, *pro se*.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Penalty for Motor Fuel Tax (“Notice”) to JOHN DOE (“taxpayer”). The Notice alleged that the taxpayer failed to display a notice on his container, storage tank, or facility used to store dyed diesel fuel. The taxpayer timely protested the Notice. The parties filed a Joint Stipulation of Facts with statements supporting their positions and asked that this matter be decided based on their written submissions. After reviewing the documents presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On July 27, 2000, the taxpayer failed to display the notice “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” on its storage tank or facility that is used to store or distribute dyed diesel fuel. (Stipulation #1)
2. The taxpayer informed the inspector for the Bureau of Criminal Investigation for the Department that he was preparing to repaint and label his tank but he was waiting for other contractor work to be finished before proceeding. After the taxpayer painted and properly labeled the tank with the required notice, an inspector returned to the site and found that the taxpayer was in full compliance. (Stipulation #2)

3. On December 8, 2000 the Department issued NTL number 00-000000-0 to the taxpayer showing a penalty due of \$500 for the failure to display the required notice on his storage tank or facility on July 27, 2000. (Stipulation #3)

CONCLUSIONS OF LAW:

Section 4f of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which became effective January 1, 2000, provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel.” (35 ILCS 505/4f)

Subsection 14 of Section 15 of the Act provides as follows:

“14. Any person who owns, operates, or controls any container, storage tank, or facility used to store or distribute dyed diesel fuel without the notice required by Section 4f shall pay the following penalty:

First occurrence.....\$ 500
Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

The taxpayer contends that the penalty is excessive for a first time offense. He also states that he did not receive any notification of the change in the law and was not aware of the requirement concerning the label on the tank.

The Department states that it has a policy of sending notices of changes in the law to all licensed sellers of petroleum products. The taxpayer should have received the notice, but even if he did not, the Department contends that nothing in the statute requires that notice be given. The Department argues that under the current law there is no alternative to upholding the penalty.

Unfortunately for the taxpayer, as the Department has stated, nothing in the statute allows for the abatement of the penalty. The statute simply provides that the failure to provide the notice on the storage tank requires the imposition of the penalty. Although the taxpayer may have been unaware of the change in the law, the taxpayer still had the duty to follow the newly enacted provision. It must therefore be recommended that the penalty be upheld.

Linda Olivero
Administrative Law Judge

Enter: July 25, 2001